

ORIGINAL

FILED

DISTRICT COURT OF GUAM

OCT 17 2005

MARY L.M. MORAN
CLERK OF COURT

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IN THE UNITED STATES DISTRICT COURT

FOR THE TERRITORY OF GUAM

FLORENCIA Q. LEWIS

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CIVIL CASE NO. 05-00026

**ANSWER OF THE UNITED STATES
TO AMENDED COMPLAINT**

Defendant United States of America, by and through its counsel, Leonardo M. Rapadas, United States Attorney for the Districts of Guam and the NMI, and Mikel W. Schwab, Assistant United States Attorney for said Districts, answers Plaintiff's Complaint in like numbered paragraphs as follows:

1. This paragraph sets forth jurisdictional allegations to which no response is required. To the extent an answer is required, Defendant DENIES.
2. ADMITS in part. DENIES in part. The United States ADMITS that Plaintiff flew from Guam in August of 2002, and underwent an angiogram, stent placement and angioplasty of her renal artery on August 12, 2002. The United States is without sufficient information about the remainder of the averments, and therefor DENIES those allegations.
3. This paragraph sets forth a legal conclusion to which no response is required. To the extent an answer is required, Defendant DENIES.

4. This paragraph sets forth a legal conclusion to which no response is required. To the extent an answer is required, Defendant DENIES.
5. Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 5 and, on that basis, DENIES those allegations.
6. Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 6 and, on that basis, DENIES those allegations.
7. Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 7 and, on that basis, DENIES those allegations.
8. This is a legal conclusion to which no response is required, however to the extent an answer is required, defendant DENIES.
9. DENIES.
10. DENIES. The date on the SF 95 claim form is "8/11/04". The claim was received by Tripler Army Medical Center on August 11, 2004.
11. Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 11 and, on that basis, DENIES those allegations.
12. Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 12 and, on that basis, DENIES those allegations.
13. DENIES.
14. DENIES.
15. DENIES.
16. DENIES.
17. DENIES.
18. DENIES.
19. DENIES.
20. DENIES.
21. DENIES.
22. DENIES.

1 23. DENIES.

2 24. DENIES.

3
4 The paragraph beginning with "Accordingly" sets forth Plaintiff's prayer for relief to
5 which no response is required. To the extent this paragraph is deemed to contain allegations of
6 material fact, DENIES.

7 All allegations not specifically responded to above are DENIED. And further answering,
8 Defendant avers:

9
10 AFFIRMATIVE DEFENSES

11
12 FIRST AFFIRMATIVE DEFENSE

13 Defendant DENIES that it owed Plaintiff any duty under law; that any of its agents or
14 employees were negligent and/or breached any standard of care due the Plaintiff and/or engaged
15 in any conduct which was the proximate cause of the injuries, damages and losses allegedly
16 incurred by Plaintiff.

17
18 SECOND AFFIRMATIVE DEFENSE

19 Plaintiff's claim is diminished or completely barred by Guam law regarding
20 comparative/contributory negligence.

21
22 THIRD AFFIRMATIVE DEFENSE

23 Pursuant to 28 U.S.C. § 2675, Plaintiffs are prohibited from claiming or recovering an
24 amount against the United States in excess of that which was set forth in a claim presented to
25 the United States of America.

26 //

27 //

28 //

1 FOURTH AFFIRMATIVE DEFENSE

2 Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for
3 prejudgment interest against the United States of America.
4

5
6 FIFTH AFFIRMATIVE DEFENSE

7 Under 28 U.S.C. § 241 2(d)(1)(A), Plaintiff cannot recover attorney's fees from the
8 United States of America.
9

10 SIXTH AFFIRMATIVE DEFENSE

11 Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial.
12

13 SEVENTH AFFIRMATIVE DEFENSE

14 All future damages, if any, must be reduced to present value.
15

16 EIGHTH AFFIRMATIVE DEFENSE

17 The United States is entitled to offset for all amounts received by Plaintiff from the
18 United States and its agencies, and from all collateral sources, by reason of Plaintiff's alleged
19 injuries.
20

21 NINTH AFFIRMATIVE DEFENSE

22 Defendant reserves the right to amend its Answer with additional defenses of which it
23 may become aware as discovery progresses and to raise any other matter constituting an
24 avoidance or affirmative defense.
25

26 //

27 //

28 //

1 **WHEREFORE**, having fully answered all counts of the Complaint, Defendant prays that
2 Plaintiff takes nothing by way of her Complaint against it, that the same be dismissed, and that
3 judgment be awarded in favor of Defendant, together with costs and such other and further relief
4 as the Court deems appropriate in this case.

5 Dated this 17th day of October, 2005

6
7 LEONARDO M. RAPADAS
8 United States Attorney
9 Districts of Guam and the NMI

10 By:

11 MIKEL W. SCHWAB
12 Assistant U.S. Attorney

13 **OF COUNSEL:**

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